

CITY OF NEW YORK  
CONFLICTS OF INTEREST BOARD

2 Lafayette Street, Suite 1010  
New York, New York 10007  
(212) 442-1400; (212) 437-0705 (Fax)

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July 12, 2019

Cyrus R. Vance, Jr.  
District Attorney, County of New York  
One Hogan Place  
New York, New York 10013

Re: Conflicts of Interest Board Case No. 2019-106

Dear District Attorney Vance:

This is in response to your letters to the Conflicts of Interest Board (the "Board"), dated May 20, 2019, and July 10, 2019, and additional communications between your agency and Board staff, requesting a waiver pursuant to the conflicts of interest provisions of Chapter 68 of the City Charter to permit you to use two District Attorney for New York County ("DANY") employees and to use and disclose confidential DANY information for the purpose of conducting a campaign contributor screening protocol. This letter supersedes the Board's letter dated June 25, 2019.

Relevant Facts

The Board is advised that you have served as the District Attorney for New York County since 2010; that you were most recently reelected to this position in 2017; and that the next election for this position will be held in 2021.

You advise the Board that you sought advice from the Center for the Advancement of Public Integrity ("CAPI") at Columbia Law School about ensuring that contributions received by your reelection campaign (the "Campaign") do not create any real or perceived conflicts of interests between the Campaign and the work of DANY. In response to your request for advice, CAPI published a report in January 2018 recommending policies that district attorneys across New York State could implement to reduce conflicts of interests between their offices and their reelection campaign fundraising practices (the "Report"). The Report made a number of recommendations, most notably that (1) an incumbent district attorney should refuse or limit campaign donations from individuals with matters before that office, including defendants with cases before the office, subjects of public and confidential investigations, and attorneys and their law partners who currently represent clients before the office; (2) an incumbent district attorney should enforce a strict separation between campaign staff and office staff so that there are no



common personnel between the organizations and there is limited communication and information-sharing between the organizations; and (3) campaigns for district attorney should implement "blinding" fundraising standards to keep candidates from learning campaign donor identities and the amounts donated.

You further advise that, shortly after the Report was published, you pledged to implement and, in some cases, exceed the recommendations made in the Report. In particular, you have implemented a campaign contributor screening protocol at DANY to determine whether contributions to the Campaign are made by individuals with matters before DANY (the "Protocol"). Participation in conducting the Protocol at DANY is limited to the DANY General Counsel and one DANY analyst. Participation in implementing DANY Protocol determinations at the Campaign is limited to the two individuals serving as the Campaign's Compliance Consultant and the Campaign's Fundraising Consultant. The Campaign's Compliance Consultant is responsible for ensuring that Campaign donations are received in compliance with applicable campaign finance limits and reporting rules and conducting Campaign donor screenings using public databases and the Campaign's internal donor databases. The Campaign's Fundraising Consultant is responsible for supervising the Campaign's fundraising process and communicating with Campaign donors.

The remainder of the Protocol functions as follows:

- The DANY General Counsel and a DANY analyst check a list of donors provided by the Campaign's Compliance Consultant against DANY databases that track individuals with matters before DANY (the "DANY Databases"). The DANY Databases contain information regarding confidential DANY investigations.
- Should a Campaign donation come from an individual who has public matters before DANY, such as a defendant with a case before DANY or an attorney who currently represents clients before DANY, the DANY General Counsel would advise the Campaign's Compliance Consultant to return the donation. The Campaign's Compliance Consultant would then instruct the Campaign's Fundraising Consultant to process such a return to the donor.
- Alternatively, should a donation come from a subject of an ongoing confidential investigation, the DANY General Counsel would advise the Campaign's Compliance Consultant to deposit the donation check into an account separate from the Campaign's main account and used solely for this purpose. Once the investigation concludes, the DANY General Counsel would advise the Campaign's Compliance Consultant either to return the check to the donor, if the investigation was made public, or contribute it to the New York State Interest on Lawyer Account ("IOLA") Fund, should the investigation remain confidential or the DANY General Counsel concludes there is some other reason to avoid returning the funds to the donor. The Campaign's Fundraising Consultant will not be informed about Protocol determinations regarding Campaign donations from subjects of confidential DANY investigations. You advise that, as of the date of your



request, the DANY General Counsel and the DANY analyst had not identified a Campaign donation made by a subject of a confidential investigation.

You advise that interactions between DANY and the Campaign regarding Protocol determinations are limited to communications between the DANY General Counsel and the Campaign's Compliance Consultant. In those communications, the DANY General Counsel does not provide information to the Campaign's Compliance Consultant regarding the status of a donor's matters before DANY other than to notify the Campaign's Compliance Consultant to return a donation or hold it in the separate account. Further, the Campaign's Compliance Consultant and the Fundraising Consultant will each enter into a written confidentiality agreement with DANY agreeing to protect information related to Protocol determinations. The confidentiality agreements will specify that the Campaign's Compliance Consultant will not disclose Protocol information to other representatives of the Campaign, except to the Campaign's Fundraising Consultant as necessary to process donation returns from individuals who have public matters before DANY; that the Campaign's Fundraising Consultant will not disclose Protocol information to other Campaign representatives; and that the Campaign's Compliance Consultant and the Campaign's Fundraising Consultant will not disclose Protocol information to anyone outside the Campaign, except to donors who have public matters before DANY as necessary to process donation returns.

You advise that the Protocol protects the work of DANY by helping to prevent the acceptance of Campaign donations that could create an actual or perceived influence on DANY decision-making. Additionally, you advise that the size of the DANY Databases and the confidential information contained within the DANY Databases make it impossible to conduct the Protocol outside of DANY offices or by an individual not employed by DANY and bound by DANY's confidentiality requirements; that the strict separation between Campaign and DANY staff means that Campaign staff could not conduct the Protocol; and that it would be imprudent for you to conduct the screening yourself, as your involvement in the Protocol would run counter to the "blinding" standards recommended by CAPI.

#### Relevant Law

Charter Section 2604(b)(2) prohibits a public servant from engaging in any business, or having any private interest, that conflicts with the proper discharge of his or her official duties. Pursuant to Board Rules Sections 1-13(a) and 1-13(b), a public servant may not use City time, letterhead, personnel, equipment, resources, or supplies for any non-City purpose.

Charter Section 2604(b)(4) provides that no public servant shall disclose any confidential information concerning the property, affairs or government of the City that is obtained as a result of the official duties of such public servant and that is not otherwise available to the public, or use any such information to advance any direct or indirect financial or other private interest of the public servant or of any other person or firm associated with the public servant.



Charter Section 2604(b)(9) prohibits any public servant from coercing any other public servant to engage in political activities, and further provides that a public servant may not even ask any public servant who is subordinate to him or her to participate in a political campaign. However, Section 2604(b)(9)(b) states that "[n]othing contained herein shall prohibit a public servant from requesting a subordinate public servant to speak on behalf of a candidate, or provide information or perform other similar acts, if such acts are related to matters within the public servant's duties or responsibilities."

Charter Section 2604(e) provides that a public servant may hold a position or engage in conduct otherwise prohibited by Chapter 68 if the Board determines, after receiving written approval of the public servant's agency head, that such position or conduct does not involve a conflict with the purposes and interests of the City.

#### Advice

It has become commonplace for candidates for elective office to pledge to decline donations to their political campaigns from certain persons, such as lobbyists or representatives of special interests, on the grounds that such monies might inappropriately influence government decision-making. To ensure compliance with such campaign pledges, political campaigns routinely screen donations as part of their fundraising operations. Screening contributions to your political campaign is, at least in part, a political activity in furtherance of your campaign pledge to refuse donations from people with matters before DANY. Because the Protocol is a political activity, it would violate Charter Section 2604(b)(2), pursuant to Board Rules Sections 1-13(a) and 1-13(b), and Charter Section 2604(b)(9) for you to use DANY resources and DANY personnel to conduct the Protocol and for you to direct DANY personnel to participate in the Protocol. Additionally, the use of confidential DANY information for the Protocol and the disclosure of a limited amount of that confidential information to the Campaign would violate Charter Section 2604(b)(4).

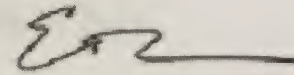
However, because the Protocol advances the valuable City goal of reducing the influence of campaign donations in prosecutorial decision-making and because the Protocol cannot be implemented effectively without the use of limited DANY personnel and the use and disclosure of limited confidential DANY information to the Campaign, the Board has determined that it would not conflict with the purposes and interests of the City for you to direct the DANY General Counsel and a DANY analyst to conduct the Protocol and for the DANY General Counsel to disclose a limited amount of confidential DANY information to the Campaign, as described above, *provided that* only the two individuals serving as the Campaign's Compliance Consultant and the Campaign's Fundraising Consultant participate in the implementation of Protocol determinations at the Campaign and that they each enter into a confidentiality agreement with DANY, as described above.



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The advice conveyed in this letter is conditioned on the correctness and completeness of the facts supplied to us. If such facts are in any respect incorrect or incomplete, the advice we have given to you may not apply. If at any time you would like further advice based on a change of circumstances or additional information, please contact us.

Very truly yours,



Erika Thomas  
Acting Chair

Fernando A. Bohorquez, Jr.  
Anthony Crowell  
Jeffrey D. Friedlander

cc: Carey R. Dunne

Richard Briffault did not participate in the consideration or decision of this matter.